STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2002 DEC 16 A 10: 34

IN RE:

Lucas County Sheriff's Office
Employer

and

Ohio Patrolmen's Benevolent Association

SERB CASE NO: 02-MED-10-84

FACT FINDER
DONALD R. BURKHOLDER

FACT FINDER'S REPORT AND RECOMMENDATION

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Marilyn Widman, Legal Counsel
Michelle Sullivan, Legal Counsel
E. J. Materni, Deputy
Rich Granata, Deputy
Mark Woodruff, Deputy
Bill Park, Deputy
Lori Kosmyna, Dispatcher
Sylvia Linzy, Counselor
Bill Mark, Transportation

FOR THE LUCAS COUNTY SHERIFF'S OFFICE

Jon Rogers, Esq., Director, Internal Affairs
Richard D. Keller, Corrections Administrator
G. Gregory Michael, Director, Court Services

Executive Summary of Fact Finder Recommendation

Issue 1

Art.1, Recognition, Sec. 4 - Probationary Period.

Employer Position. No change.

Issue 2

Art. V, Sec. 6 - Appeal of Disciplinary Action.

Employer Position. No change.

Issue 3

Art. VII, Sec. 6 - Seniority and Bid System

Union Position.

Issue 4.

Art. VII, Sec. 9 - Recall for Short-Term Absence. Non-Command

(First page of Union requested language was accepted by Employer at Hearing. Second page of Union requested language on remedy is recommended, i.e., Union position)

Issue 5

Art. VII - Sec. 9 (A). Recall for Short Term Absence-Command

(Agreement reached, TA'd at Hearing)

Issue 6

Art. IX -Sec. 2. Overtime

Employer Position. No change.

Issue 7

Art. IX - Sec. 4. Compensatory Time

Union Position.

Issue 8

Art. IX, Sec. 5 - Bidding and Changing Shifts

Union Position.

Issue 9

Art. XII, Sec. 2. -Accumulation of Sick Leave

Union Position.

Issue 10

Art. XXIII-Miscellaneous Provisions Sec. 2. Law Enforcement Service Factor

Employer Position.

Issue 11

Art. XVIII - Equipment, Sec. 1. Uniforms and Maintenance

Employer Position.

Issue 12

Art. XXVI - Rates of Pay

Employer Position.

Issue 12A

Art. XXIII -Miscellaneous Provisions. Sec. 6. Mileage Reimbursement

Language TA'd at the Hearing.

Issue 13

Art. XXVI - Rates of Pay

Employer Position

Issue 14

Art. XXVI - Rates of Pay

Employer Position

Issue 15

(New Article) Employee Parking

Union Position

Issue 16

Art. XVII - Agreement Termination

Union Position

Issue17

Art. XXI - Insurance

(No new language necessary, considering that Employer position on wages was recommended. Employer position on insurance related directly to wage recommendation.

STATE EMPLOYMENT RELATIONS BOARD [SERB]

SCOPE OF DUTIES OF THE FACT-FINDING PANEL in accord with Section 4117 of the Administrative Code

A. The fact-finding panel shall attempt to mediate the disputes of the parties prior to conducting a fact-finding hearing.

B. When mediation efforts do not resolve all issues at impasse, the fact-finding panel shall hold an evidential hearing except that the parties may stipulate facts and waive a hearing. For purposes of hearing, the fact-finding panel shall have the power to regulate the time, place, course, and conduct of the hearing, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and request the Board to issue subpoenae to compel attendance of witnesses and the production of books, papers, and records relating to any matter before the fact-finding panel. The fact-finding panel may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. Fact-finding hearings are to be held in private.

C. The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

D. The fact-finding panel, in making recommendations, shall take into consideration the following:

(1) Past collectively bargained agreements, if any, between the parties.
(2) Comparison of unresolved issues relative to the employees in the bargaining unit with the issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
(3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
(4) The lawful authority of the public employer;
(5) Any stipulations of the parties; and,
(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Introduction

The parties to the proceeding are the Lucas County Sheriff's Office (a public employer) and the Ohio Patrolmen's Benefit Association -Non-Command (an employee organization). The bargaining unit consists of approximately 440 members and includes the following: all full time Clerk Typists, Clerk I, Clerk II, Dispatchers/Clerk III, Maintenance Workers, Process Servers, Deputy Sheriffs, Corrections Officers and Building Security Officers. The Ohio Patrolmen's Benefit Association was certified as the collective bargaining representative for this unit on July 24, 2000. Prior to that date, members of the barging unit were represented by District 2A Transportation, Technical Warehouse, Industrial, and Service Employees Union/American Maritime Officers Association for over twenty years.

The parties are negotiating the second Agreement with OPBA, which offered to meet to begin negotiations for this contract in correspondence dated September 3, 2002. The Sheriff's Office exercised its right under the Agreement to delay the commencement of negotiations until 30 days prior to the anniversary date of the contract. The following dates were scheduled for negotiating sessions: November 19, 27, and 27; December 2, 3, 4, and 5, 2002.

Appointment

The Fact-Finder was notified by telephone on November 21, 2002 by Marilyn Widman of the OPBA of his selection by the parties and appointment by SERB. The parties did not wish to jointly request an extension of the Fact-Finding period. A letter from Ms. Widman confirmed the date of the Hearing as Thursday, December 12, 2002 at the Lucas County jail. It was obvious that there were many issues; thus the parties were asked by letter and fax for position statements, preparatory material including a copy of the present agreement, information on the composition and history of the bargaining unit, a list of matters in dispute, and a list of negotiating sessions which have taken place. With

the exception of the Position Statement, which the parties desired not to provide because negotiations were still under way, this information was provided by Ms. Widman's letter of November 26, 2002, received Monday, December 2nd. The SERB letter of appointment to this case, in compliance with Ohio Revised Code 4117.14(C) (3), dated November 29, 2002, was received on Wednesday, December 4th the day before the Hearing.

Hearing

A Fact-Finding Hearing was conducted on Thursday, December 5, 2002 at the Lucas County Jail in Toledo. The fourteen issues initially submitted to the Fact Finder eventually became seventeen because of some overlapping, the need for clarity, and orderly numbering and identification. Mediation was offered at the outset; the parties declined. The issues were discussed in a wide ranging dialogue over the course of the ten-and-a-half hour hearing, in which the advocates and witnesses presented testimony and briefs and exhibits were provided. Substantial information on the issues was provided, along with helpful explanations when the Fact Finder sought clarification during the ten to eleven hour hearing. The advocates and the parties were very courteous and professional, characteristics greatly appreciated by the Fact-Finder.

Fact-Finding Report Due Date

The parties agreed that the Fact-Finder Report would be placed in the overnight mail (U. S. Postal Service Express Mail) on or by Friday, December 13, 2002, thus being available to the parties on Monday, December 16, 2002.

Format

1. Issues will be numbered based on the numbering in the Union Position Statement.

2. A section labeled Current Contract will briefly discuss the present language of the article/section to be dealt with.

3. The text of the current language will be apparent in that it will not be underlined. Union- Requested language will be identified in a section labeled as such, with language the Union wants to *drop* identified with boldface type, enclosed in boldface parentheses, i.e., [ ] and a single underline, and language the Union wants to *add* identified with boldface and double underline.

4. The same system noted immediately above will be used for Employer - Requested language.

5. Where a party requests no change, such a request will be clearly noted. with the existing language not repeated.

6. A section labeled Discussion and Analysis is provides the Fact-Finder's rationale in brief. This section is not present where the parties agreed on the disputed language at the Hearing.

7. A section labeled Recommended Language will indicate the Fact-Finder's decision.

issues are numbered based on the numbering in the Position Statement of the Union, except for Issues Numbers

There is some variation from this format in Issue No. 4, where the parties agreed on the first portion of the language, but not on the second or last portion; Issue No. 5, where the parties agreed on the entire section in dispute, and Issue No. 12A, where the parties signed off, i.e., t.a.'d, new language. The last Issue, No. 17, is not in the Union Position Statement but is addressed in the Employer Position Statement, and is a significant factor in the totality of the recommendations.

ISSUES ARE NUMBERED AS IN THE UNION POSITION STATEMENT

1. Article 1, Recognition, Section 4, Probationary Period

Current Contract

The probationary period for a new employee hired as a correction officer shall be for two hundred seventy (270) working days and shall begin upon completion of the academy. The probationary period for a new employee other than one attending the academy shall be two hundred seventy (270) working days and shall begin upon the hiring date. After the probationary period is completed, the employee shall be placed on t'e Office Seniority list and his/her seniority date shall be retroactive to his/her original date of employment. All employees who have completed the probationary period of employment with the Office shall have the right to join the Union and be entitled to representation by the Union according to the terms and conditions of the current contract. Employees who are transferred or promoted within the Office must also serve a one hundred twenty (120) calendar day promotion period on the new assignment. If an employee does not successfully complete the probationary period in the new position, he/she will return to h is/her prior job section., if possible, with no loss of original wages or benefits. All employees affected by this change will also return to their prior job section with no loss of status.

In the case of a probationary period x x x

Union - Requested Language

The probationary period for a new employee hired as a correction officer shall be for two hundred seventy (270) [working]calendar days and shall begin upon completion of the academy. The probationary period for a new employee other than one attending the academy shall be two hundred seventy (270) working days and shall begin upon the hiring date. After the probationary period is completed, the employee shall be placed on the Office Seniority list and his/her seniority date shall be retroactive to his/her original date of employment. [All employees who have completed the probationary period of employment with the Office shall have the right to join the Union and be entitled to

Recommended Language:

No change. Employer position.

2. Article V, Section 6. Appeal of Disciplinary Action

Current Contract

The disposition of employee discipline consisting of suspensions of greater than three (3) days and/or dismissal may be appealed to the State Personnel Board of Review.

For all other employee discipline, the Review Board shall make a recommendation as to whether discipline is warranted in each individual case. The matter shall then be referred to the Sheriff and/or appropriate Hearing officer for final disposition. the . In the event the Sheriff and/or appropriate Hearing officer does not follow the recommendation of the Review Board and imposes discipline, the Sheriff and or /Hearing Officer shall prepare a written statement explaining the reason(s) for departure from the recommendation(s) of the Review Board.

If the Sheriff and/or Hearing Officer departs from the Review Board's recommendation, the employee shall have the right to grieve the discipline up to and including mediation. The Office and the Union shall mutually select a mediator from a panel of mediators provided by the Toledo Labor Management Committee.

Union - Requested Language

The disposition of employee discipline consisting of suspensions of greater than three (3) days and/or dismissal may be appealed to the State Personnel Board of Review. Suspensions of three (3) days or less may be appealed to an arbitrator who shall be mutually selected by the Employer and the OPBA upon execution of this Agreement to serve as arbitrator of such disciplinary action grievances for the duration of this agreement.

For all other employee discipline, the Review Board shall make a recommendation as to whether [discipline] the complaint is warranted in each individual case. The matter shall then be referred to the Sheriff and/or appropriate Hearing officer for final disposition, including the imposition of discipline. In the event the Sheriff and/or appropriate Hearing officer does not follow the recommendation of the Review Board that a complaint is not warrantedand imposes discipline, the Sheriff and or /Hearing Officer shall prepare a written statement explaining the reason(s) for departure from the recommendation(s) of the Review Board.

If the Sheriff and/or Hearing Officer departs from the Review Board's recommendation, the employee shall have the right to grieve the discipline up to and including mediation. The Office and the Union shall mutually select a mediator from a panel of mediators provided by the Toledo Labor Management Committee.

Employer - Requested Language

No change.

Discussion and Analysis

The Union asserted that suspensions of three days or less should be subject to possible arbitration, presenting records of the numbers of employees given suspensions, the number suspensions resulting in hearings, etc. The Union alleged that an OPBA steward - Dispatcher had received an excessive suspension of three days for allegedly "inappropriate demeanor" during the Disciplinary Hearing rather than for the conduct for which he was charged. Because the disciplined dispatcher received a two (2) day greater suspension than the other employee who was involved in the same incident, the Union asserts that he was being punished for defending himself at the Hearing.

The Employer asserts that the rights to appeal any suspension are established in the Ohio Revised Code, Section 124.34 of which provides that any employee subject to a suspension of more than three days and/or removal has the right to appeal such a decision to the State Personnel

Board of Review. The Sheriff asserts that the State of Ohio has established the level of discipline that would start the appeal process. To expand on that would create a situation where the Sheriff would have to be defending even the most minor discipline imposed at a cost that would in effect force the Sheriff not to bother to mete out minor discipline, and by implication to increase the amount of discipline meted out, thereby increasing the percentage and number of cases going directly to the State Personnel Board of Review. The Sheriff's position is that the amount of matters taken to arbitration would dramatically increase, a position supported by the fact that more than 90 per cent of all discipline imposed by the Sheriff would fall into the three-day-or-less category.

The Fact-Finder notes that there may have been some excesses in discipline meted out in the three-day-or-less category. However, there is no persuasive evidence that such alleged abuses have become commonplace. The time, disruption, and expense involved in arbitration of what would be certain to become numerous grievances, do not justify the Union request.

Recommended Language:

No change. Employer position.

3. Article VII, Section 6. Seniority and Bid System

Current Contract Language

The current bid and promotion system will again be reviewed by a joint and equal committee to determine if commendations and/or certificates of training have or will have any role in computing special determining factors points. A recommendation will be presented to the body for a vote.

A. The following formula shall apply when permanent job openings exist within the Office from the rank of Counselor up to and including the rank of Sergeant.

1. Job description, title, salary.

2. Qualifications required: Standard qualification forms for all positions shall be made a part of this Agreement .

3. Special determining factors:

25 pts. - consists of: work evaluations, commendations, certificate of special training, disciplinary reports (E.g. after the 3rd late slip)

25 pts. - oral interview. Panel composed of a minimum of three (3) out of four (4) of the following, all four (4) if possible. (Same panel shall interview all applicants.)

a. Division head or designee.
b. An immediate supervisor where vacancy exists.
c. Training/inspection Officer or an officer outside of the section.
d. Staff person from the Criminal Justice Training Center.

The following categories will be utilized in the oral interview:

5 pts. -Ability to communicate.
5 pts. - Confidence
5 pts. - Suitability to job
5 pts. - Attitude
5 pts. - Organization

These scores will be averaged by the total number of interviews.

25 pts. Test Vacancy notification shall state whether test is "general knowledge" or "job related." Study material shall be made available for "job related" exams.

.10 of a point, or for purposes of establishing a Sergeant's eligibility list, the same constant provided for seniority in the Command employees' collective bargaining agreement in effect at the time of the bid, shall be added to score for each month of Office time up to a maximum of fifteen (15) years.

Employees must have at least three (3) years Office seniority prior to the test date on a Sergeant's level position.

Employees must have one (1) year of continuous service as a Sergeant prior to applying for a Lieutenant's position.

B. The following formula shall apply when permanent job openings exist within the Office of a non-promotional nature.

1. Job description, title, salary
2. Qualifications required: standard qualification forms for all positions shall be made a part of this Agreement.
3. Special determining factors:

25 pts. - consist of: work evaluations, commendations, certificates of special training, disciplinary reports. (E.g. after 3rd late slip)

25 pts. - oral interview Panel composed of minimum of three 3) out of four (4) if possible. (Same panel shall interview all applicants)

a. Division head or designees.
b. An immediate supervisor where vacancy exists.
c. Training/Inspection Officer or an officer outside of the section.
d. Staff person from the Criminal Justice Center.

The following categories will be utilized in the oral interview:

5 pts -Ability to communicate
5 pts. - Confidence
5 pts - Suitability to job
5 pts - Attitude
5 pts - Organization

These scores will be averaged by the total number of interviewers.
-REMAINDER OF ARTICLE VII, SECTION 6, BID SYSTEM IS UNCHANGED, AND IS NOT REPEATED HE

Union-Requested Language

The current bid and promotion system will again be reviewed by a joint and equal committee to determine if commendations and/or certificates of training have or will have any role in computing special determining factors points. A recommendation will be presented to the body for a vote.

A. The following formula shall apply when permanent job openings exist within the Office from the rank of Counselor up to and including the rank of Sergeant.

1. Job description, title, salary.
2. Qualifications required: Standard qualification forms for all positions shall be made a part of this Agreement .
3. Special determining factors:

25 pts. - consists of: [work evaluations] commendations, certificate of special training, disciplinary reports (E.g. after the 3rd late slip)

25 pts. - oral interview. Panel composed of a minimum of three (3) out of four (4) of the following, all four (4) if possible. (Same panel shall interview all applicants.)

a. Division head or designee.
b. An immediate supervisor where vacancy exists.
c. Training/inspection Officer or an officer outside of the section.
d. Staff person from the Criminal Justice Training Center.

The following categories will be utilized in the oral interview:

5 pts. -	Ability to communicate.
5 pts. -	Confidence
5 pts. -	Suitability to job
5 pts. -	Attitude
5 pts. -	Organization

These scores will be averaged by the total number of interviews.

25 pts. Test — Vacancy notification shall state whether test is "general knowledge" or "job related." Study material shall be made available for "job related" exams.

[.10] 0.194 of a point, or for purposes of establishing a Sergeant's eligibility list, the same constant provided for seniority in the Command employees' collective bargaining agreement in effect at the time of the bid, shall be added to score for each month of Office time up to a maximum of fifteen (15) years.

Employees must have at least three (3) years Office seniority prior to the test date on a Sergeant's level position. Employees must have one (1) year of continuous service as a Sergeant prior to applying for a Lieutenant's position.

B. The following formula shall apply when permanent job openings exist within the Office of a non-promotional nature.

1. Job description, title, salary

2. Qualifications required: standard qualification forms for all positions shall be made a part of this Agreement.

3. Special determining factors:

25 pts. - consist of: work evaluations, commendations, certificates of special training, disciplinary reports. (E.g. after 3rd late slip)
25 pts. - oral interview Panel composed of minimum of three (3) out of four (4) if possible. (Same panel shall interview all applicants)

a. Division head or designees.
b. An immediate supervisor where vacancy exists.
c. Training/Inspection Officer or an officer outside of the section.
d. Staff person from the Criminal Justice Center.

The following categories will be utilized in the oral interview:

5 pts -Ability to communicate
5 pts. - Confidence
5 pts - Suitability to job
5 pts - Attitude
5 pts - Organization

These scores will be averaged by the total number of interviews.
XXX

REMAINDER OF ARTICLE VII, SECTION 6. BID SYSTEM IS UNCHANGED, AND IS NOT REPEATED HERE.

Employer - Requested Language

All job openings of a non-promotional nature shall be filled by a letter of interest. The Employer shall have the right to transfer and assign job duties within classifications based upon the operational needs and for the efficient and effective service, as deemed appropriate by the Employer. Employees interested in assignments or transfers when a job opening exists may make a written request for consideration to the Sheriff. The last written request on file shall be considered to be the preference of the employee. The Employer agrees to post for twenty days any job opening so that employees may submit a letter of interest.

Discussion and Analysis

Unit members seeking promotion are currently subject to work evaluations by Sergeants who are represented in separate bargaining unit and under a separate Agreement. The OPBA alleges that a good many of the evaluations are inconsistent not given on a regular basis, and result in a bias against its members, who are seeking promotions in the Sheriff department hierarchy. The Union also seeks an increase of .094 of a point, from the current Agreement's provision for .10 of a point for each month of Office time up to a maximum of 15 years, for purposes of establishing a Sergeant's eligibility list. The 0.194 of a point level is currently in use for Sergeant's seeking promotion.

The Employer seeks new language which would provide that all job openings of a non-promotional nature be filled by letter of interest. There are 19 positions listed in Article VII, Seniority and Bid System, on page 16 of the current Agreement, which are "...exempt from the bidding procedure". These non-bid positions are to be posted when vacant, and employees may submit a letter of interest. The Employer notes that Summit County, Wood County, Henry County, Lorain County, Montgomery County Hamilton County, Cuyahoga County and Franklin County do not use a bid system for job vacancies; in these counties all job openings in those offices are filled at the discretion of the Sheriff with varying qualifications taken into account.

Seniority is a valued commodity and confers a degree of status for the employee, and it should be given a high priority. The apparent, perceived, and therefore probably 'real' inequities in the point system, as well as in the alleged overuse of the letter of interest procedure, would seem to provide a genuine concern over fairness in promotion, and/or lateral transfer. Poor morale and a negative view of the promotional system among employees do not enhance employer-employee relations and may in fact be damaging.

Recommended Language

The language proposed by the Union is recommended, including the removal of "work evaluations" in A. 3.

4. Article VII, Section 9, Recall for Short Term Absence-Non-Command

Current Contract

The current contract provides that when the Office decides that recall is necessary to fill short term absences, recall will be utilized as follows in each section.

1st - The off-going shift will be asked to work on a voluntary basis by office seniority.

2nd - If there are not sufficient volunteers, office seniority recall will be used within the section.

3rd - If necessary, office recall outside the section shall be used and include all qualified personnel.

4th - If positions still cannot be filled, the least senior employee on the off-going shift will be required to work, but not more than once during the four (4) day work schedule, except for a declared emergency.

NOTE: THE FOLLOWING LANGUAGE PROPOSED BY THE UNION , THE FIRST PAGEOF THE UNION REQUEST, WAS ACCEPTED BY THE EMPLOYER AT THE FACT-FINDING HEARING. THEREFORE, THE FORMAT USED ABOVE DOES NOT APPLY, EXCEPT THAT DELETED LANGUAGE IS SHOWN IN BOLDFACE WITH SINGLE UNDERLINING, ENCLOSED IN PARENTHESES, AND NEW LANGUAGE IS IN BOLDFACE WITH DOUBLE UNDERLINING.

When the Office decides that recall is necessary to fill short term absences recall will be utilized as follows [in each section:]

1st - The off-going shift will be asked to work on a voluntary basis by office seniority. The "off-going" shift includes persons regularly assigned to the shift, with persons working recall on that shift being offered the overtime after the regularly-assigned employees but prior to persons under Step 2 below. A person filling a vacancy pursuant to the recall process cannot be forced under Step 4 to work a vacancy on the immediately subsequent shift, except for an "emergency" as defined in this Agreement at Article IX.

2nd - If there are not sufficient volunteers, office seniority [recall] will be used [within the section] to offer the recall to those persons not on the off-going shift who are otherwise regularly scheduled in the vacant job of post assignment.

3rd - If necessary, office [recall outside the section] seniority within the same Division (Corrections, Administrative Services, and Field Operations) shall be used [and] to offer the recall to [include] all qualified personnelwithin the same Division.

4th - If necessary, office seniority outside the Division (Corrections, Administrative Services, and Field Operations) shall be used to offer the recall to all qualified personnel outside the Division in which the vacancy exists.

5th - If positions still cannot be filled, the least senior employee on the off-going shift will be required to work, but not more than once during the four (4) day work schedule, except for a declared emergency.

THE UNION POSITION STATEMENT CONTINUES WITH A SECOND PAGE UPON WHICH THERE WAS NOT AGREEMENT. IT PROPOSED A REMEDY, AS FOLLOWS:

If any employee is not recalled properly pursuant to this process and is thereby denied an overtime opportunity, the remedy for such violation shall be an award of six (6) hours Recall Violation Bonus, to be scheduled for use by the employee at a time mutually agreed upon by the Employer and the employee. Any Recall Violation Bonus Hours that are still unused one calendar year after their being awarded shall be paid to the employee at his current hourly wage rate.

THE EMPLOYER POSITION STATEMENT INCLUDED THE FOLLOWING REQUESTED LANGUAGE ON BYPASS REMEDY.

In the event that an officer is inadvertently bypassed for recall, no monetary adjustment will be made to the bypassed officer - however, the bypassed officer will be placed first on the list for the next two recalls.

Discussion and Analysis

The Employer notes that the proposed language is taken directly out of the current collective bargaining agreement between the Sheriff and the Command Officers, referring to the fact that although the language found in the Command contract can not be found in the non-command contact when AMO represented both groups of employees, it was understood that this was the remedy for non-command as well. This practice was in effect for a prolonged period of time, dating back at least

15 years. It was determined through mediation/arbitration that the past practice could no longer be applied to non-command officers, and the proper remedy for a violation of the recall procedure was to pay the employee even though he did not work. The Sheriff has objected to this entitlement and would prefer to return to past practice.

The Union supports its argument by noting that the issue of recall has been the source of many grievances and labor-management discussions in the past two years. A grievance heard by Mediator Martin Fitts (LMC #01.42) recommended payment at one and a half times the regular rate for failure to follow the recall procedure. The Employer declined to follow the recommendations of the Mediator. A subsequent arbitration by Sister Ann Francis Klimkowski ordered payment in the same formula, time and a half, recommended by Mediator Fitts. Copies of several communications, memoranda of instruction, and grievances make it clear that this is a matter of considerable concern by the employees. The matter of forced recall for short-term absences obviously has become a significant problem. Therefore, clear provisions for its implementation are appropriate, along with monetary reward for improper bypassing, a clear incentive to adhere to the terms of the Agreement. To quote Arbitrator Klimkowski, "Under the Agreement signed by both parties, there is no remedy for a loss of an opportunity to overtime, however, it appears that qualified employees were not called when a need arose to fill a second shift." Providing a passed-over employee two consecutive opportunities for overtime as the need arises may seem reasonable at first glance, and has apparently been the practice for approximately 15 years. However, it provides no incentive for the Employer to avoid improper bypassing, and it would most likely be difficult for the Employee to schedule his personal time with a degree of certainty.

Recommended Language

The Union's proposed language following the agreed-upon section is recommended.

5. Article VII, Section 9 (A). Recall for Short Term Absence - Command

THE PARTIES REACHED AGREEMENT AT THE HEARING ON THIS SECTION. THE NEW LANGUAGE IS RECOMMENDED, AND IS AS FOLLOWS:

If no Sergeant is available after all Command employees have been offered the opportunity for recall, pursuant to the Command collective bargaining agreement, in all sections except the Communications Center, the most senior officer on the on-coming shift (any employee regularly scheduled to work that shift) shall serve as Acting Sergeant. An officer may not be forced to accept the Acting Sergeant position, except that in the event non non-Command employee accepts the Acting Sergeant position, the most senior officer on the on-coming shift shall be forced to serve as Acting Sergeant.

If no Sergeant is available in the Communications Center after all Command employees have been offered the opportunity for recall, pursuant to the Command collective bargaining agreement, the most senior employee on the on-coming shift shall serve as Acting Sergeant.

No person shall be eligible to serve as Acting Sergeant who has less than three (3) years seniority.

Recommended Language

The agreed language above is recommended.

6. Article IX, Section 2. Overtime

Current Contract

The present Agreement provides for an overtime rate of time and one-half for all time worked when an employee works in excess of his regular shift with the approval of his immediate supervisor. Sick leave is not credited toward the standard work period. An employee who is required to work at a time not contiguous to his regularly scheduled workday is guaranteed a minimum of four (4) hours pay at the overtime rate.

Union - Requested Language

Overtime at the rate of time and one-half (1 1/2 times) of the employee's regular rate of pay shall be paid for all time when when the employee works in excess of the regular shift with the approval of his immediate supervisor. [Sick leave is not credited toward the standard work period. During any pay period of eight (80) hours, overtime shall not be paid until the overtime hours exceed any sick leave taken during the same pay period.]When an employee is required to report to work at a time not contiguous to his regularly scheduled workday, he shall be guaranteed a minimum of four (4) hours pay at the overtime rate.

Employer - Requested Language

No change.

Discussion and Analysis:

The Union seeks to remove language which prohibits sick leave from being credited toward the standard work period, for purposes of overtime computation, asserting that the sick time has been earned. The Union asserts that the employees use an earned benefit, sick leave, and then are

penalized for such usage when the time is "deducted" from an otherwise standard work week for them. The Employer asserts that if an employee is off sick that employee is not entitled to overtime hours during a pay period unless that employee's overtime exceeds the sick time taken; to reward an employee with the same pay when such employee calls in sick during the pay period only encourages employees to utilize more sick time.

There is little justification for the inclusion of sick leave in the standard work period when tallying hours worked unless the employees overtime exceeds the sick time taken, leading to appropriate payment for hours worked.

Recommended Language

The Employer position of no change in language is recommended.

7. Article IX, Section 4. Compensatory Time

Any bargaining unit employee may request to accumulate compensatory time off in lieu of overtime worked up to a maximum of three hundred twenty (320) hours effective January 1, 2001, and two-hundred forty (240) hours effective January 1, 2002. At the time this Agreement takes effect, any employee who has accumulated three hundred twenty (320) hours or more of compensatory time beginning January 1, 2001 shall be permitted to retain the full amount of accumulated compensatory time, but may not add to the amount until that employee's accumulated compensatory time falls below three hundred twenty (320) hours through December 31, 2001 or two hundred forty (240) hours effective January 1, 2002, then the employee shall not accumulate more than three hundred twenty (320) hours through December 31, 2001 or two hundred forty (240) hours from January 1, 2002, forward.

An employee shall request, using a designated form, to use accumulated compensatory time upon approval by the Office. Where an employee submits a request to use compensatory time at least fourteen (14) days in advance of the requested day, the Employer shall not refuse such request, except where an emergency arises or granting the use of

compensatory time would unduly disrupt the operations of the Office. In the event more employees request compensatory time off on a certain day than can reasonably be accommodated by the Office, the Office shall grant the use of compensatory time to the person(s) who make(s) the request for compensatory time first.

No employee shall be denied the ability to seek assignments or attend Office functions due to having accumulated the maximum amount of compensatory time. If an employee accumulates the maximum amount of overtime, and is assigned to work a project or attend an Office function which is determined by the Office to be payable only as compensatory time, said employees will be paid the appropriate amount of pay whether it be at the appropriate hourly wage or at the appropriate overtime rate.

[As soon as possible, the] The Office shall publish each individual employee's balance of accrued compensatory time on the employee's pay stub.

Union - Requested Language

The Union seeks removal of the "as soon as possible" language in order to attempt to ascertain that the individual employee's balance of accrued compensatory time appears on the employee's pay stub in a timely fashion.

Employer - Requested Language

The Employer proposed the elimination of compensatory time. However, the Employer noted that should the Fact-Finder recommend that compensatory time remain, then he has no objection to this proposal.

Discussion - Analysis

The Employer argued that compensatory time is an expensive and complicating provision because it begets scheduling problems, and its use often initiates the need for calling employees in to work on overtime. Thus the argument was that it would be to the Employer's advantage to

simply eliminate compensatory time, and in its stead pay for the time worked, including overtime as needed, rather than continue with the present system of compensatory time. The Union asserted that the compensatory time provision is working well, and that employees should have a regular notice on their pay stubs of compensatory time accumulated; although the existing language calls for the Employer to indicate on the employee's pay stub the amount of the employee's accrued compensatory time, it hasn't happened as of the date of the Fact-Finding Hearing.

The Employer's non-objection to the Union's proposed change in language if the Fact-Finder does not recommend elimination of compensatory time is a significant factor in the recommendation that the Union proposal should be adopted.

Recommended Language

The Union language is recommended.

8 Article IX, Section 5, Bidding and Changing Shifts

Current Contract

The current language provides that employees with identical rank within a section may exchange shifts on a monthly basis with the approval of the supervisor.

Union - Requested Language

Employees shall bid shift assignments every six months, and the shifts shall be awarded on the sole basis of seniority except where the Employer requires special certification, qualifications, and/or training.Employees with identical rank within a section by mutual consent with the supervisor's approval may exchange shifts on a monthly basis.

Employer - Requested :Language

No change.

Discussion and Analysis

The Union requests a bidding process permitting employees to bid for shift change every six months, with shifts to be awarded on the sole basis of seniority except where the Employer requires special certification, training, etc. The Employer states that currently, employees are assigned a shift based upon the operational needs of the Sheriff, who does attempt to take into consideration the seniority of the employees when offering openings on new shifts. However, the Sheriff believes it is bad management and an unsafe practice to overload a particular shift with new hires or at least senior officers when a new class is hired.; a mixture of least senior and more senior employees is needed to properly provide services to the community. The Employer also refers to Article II, Management Rights, providing that the Sheriff has the right to manage and direct working forces.

The Union's proposed language stipulates seniority as the primary measure "...except where the Employer requires special certification, qualifications, and/or training." This qualifier appears to provide the latitude for the Sheriff to assure a mixture of experience on any particular shift or assignment. It also seems likely that the more experienced senior officers of the Command unit would leaven the mix of the work force and have the ability to assign effectively. The union asserts that 1] the subject of seniority and bids has been a common source of grievances and complaints among the employees 2] the industry norm is to allow bidding, and 3] even large departments like Cuyahoga County have such a system in place.

Recommended Language

The Union language is recommended.

9. Article XII, Section II Accumulation of Sick Leave

Current Contract

Employees with ten or more years of service are paid in cash at the time of retirement for one third of 120 days of accrued but unused sick leave, based on the employee's rate of pay at the time of retirement.

Union - Requested Language

Employees having ten (10) or more years of service shall at the time of retirement be paid in cash for [one third (1/3)] one half (1/2) [of one hundred twenty (120) days of] the value of their accrued but unused sick leave credit [up to a maximum of forty (40) days]. Such payment shall be based on the employee's rate of pay at the time of retirement.

In the event of the death of an employee, in active service, with ten (10) or more years of service with the Office who would have been eligible for retirement at the date of death, said date of death shall be construed
as retirement, and any sick leave payment for which the decedent would have qualified shall be paid to the decedent's surviving spouse or the estate.

Employer - Requested Language

No change.

Discussion and Analysis

The Union noted that the Command Officers have received a more generous sick payout upon retirement, i.e., one-half of their accrued but unused sick leave. The Union also provided comparable agreements from similar units in other Ohio counties which support the Union position.

The employer acknowledges the increased sick payout for the command unit, emphasizing, however, that the Command unit in attaining

their goal of a higher payout gave up the sick bonus days to which they had previously been entitled. The employer also asserts that the economic cost of establishing this payout for such a large number of employees would be staggering. The Union disputes the number of members who would be taking advantage of the proposed benefit, as well as the employer's view of the 'staggering' cost.

A bargaining unit, in the larger frame of reference, always 'gives up' something to attain their objective. Nevertheless, equity in the larger picture of comparables plus internal comparables is persuasive.

Recommended Language.

Union language.

10. Article XXIII - Miscellaneous Provisions. Section 2. Law Enforcement Service Factor.

Current Language

This article is provides a specific level of monetary reward for the constant occupational stress of the employees of the Sheriff's Office.

Union Requested Language

To give recognition to the unique nature of the services performed for the Lucas County Community by the employees of the Sheriff's Office, and to compensate for the constant occupational stress of their duties, each employee shall receive a lump sum payment according to the following schedule:

1 January [2000]	2003	- [$170.00]	$330.00
1 January [2001]	2004	- [$215.00]	$430.00
1 January [2002]	2005	- [$230.00]	$530.00

Employer - Requested Language

To give recognition to the unique nature of the services performed for the Lucas County Community by the employees of the Sheriff's Office, and to compensate for the constant occupational stress of their duties, each employee shall receive a lump sum payment according to the following schedule:

1 January	[2000]	2003	- [$170.00]	$245.00
1 January	[2001]	2004	- [$215.00]	$260.00
1 January	[2002]	2005	- [$230.00]	$275.00

Discussion and Analysis

The Union asserts that the high levels of stress encountered by Office employees should be more substantially rewarded, and that stress payment levels are not comparable with similar units. The Employer points out that annual increases of $15.00 have been the practice since 2001 when all Office employees received $215.00 and that the Union position is an increase of $100.00 per year for the duration of the contract.. Additionally, the Sheriff notes that the Union position will cost approximately $44.000 per year or $132,000 over the duration of the contract. while the Sheriff's position will cost approximately $6,6600 per year or $19,800 for the duration of the contract..

Recognizing that stress goes with the job in law enforcement organizations, it is difficult to rationalize the major increases proposed by the Union.

Recommended Language

The Employer language is recommended.

II. Article XVIII - Equipment, Section 1, Uniforms and Maintenance Allowance

Current Contract

This article agrees to provide four uniforms to newly hired officers and two additional uniforms during the duration of the contract period, with stipulated dates and and levels for reimbursement. It also states that the County "make every effort" to pay the uniform allowance "as soon as possible after January 1 of each year of the contract.."

Union - Requested Language 12:30 -2:30 break; begin 2:30

The Office agrees to provide four (4) uniforms to newly hired officers as soon as possible and tow (2) additional uniforms during the duration of the contract year.

The uniform allowance shall be as follows:

Effective January 1	[2000] 2003 -	[$420.00]	$580.00
Effective January 1	[2001] 2004 -	[$460.00]	$680.00
Effective January 1	[2002] 2005 -	[$230.00]	$780.00

[The County shall make every effort to pay the uniform allowance as soon as possible after January 1 of each year of the contract.] The County shall pay the uniform allowance in the first pay period following January 1 of each year of the contract. Uniform allowance payments shall be made in one lump sum each year by separate check.

Employer - Requested Language

The Office agrees to provide four (4) uniforms to newly hired officers as soon as possible and tow (2) additional uniforms during the duration of the contract year.

The uniform allowance shall be as follow:s

Effective January 1	[2000] 2003 -	[$420.00]	$500.00
Effective January 1	[2001] 2004 -	[$460.00]	$520.00
Effective January 1	[2002] 2005 -	[$230.00]	$540.00

The County shall make every effort to pay the uniform allowance as soon as possible after January 1 of each year of the contract. Uniform allowance payments shall be made in one lump sum each year by separate check.

Discussion - Analysis

The uniform and maintenance allowance was adopted some time ago and generally has risen in small increments. The Employer asserts that the amount remained consistent with other bargaining unit that receive the Uniform allowance, with all employees receiving $480.00 as of 2002. Unit members testified at the hearing about the considerable expense of items including work boots, buttons, dry cleaning, flashlights, whistle chains, and handcuffs.

The Employer pointed out at the hearing that deputies get four uniforms when hired plus equipment, plus two uniforms each year and equipment if it breaks. If a uniform is damaged, the employee can bring it in and receive a voucher to get a new uniform. The Employer asserted that the consistent $20 raises over the last several years are consistent with the minimal increases provided for in past collective bargaining agreements, particularly since 1997. Recognizing that there are approximately 440 non-command employees, the $20 increase will result in an increase in the budget of approximately $8,800.00 per year or $26,400.00 for the duration of the contract. Adoption of the OPBA request would lead to an increase in the budget of approximately $44,000.00 per year or $132.00 over the duration of the contract.

The increase recommended by the Employer is reasonable, consistent with past practice, consistent with budgetary limitations, recognizes the needs of the employee.

Recommended Language

The Employer language is recommended.

12. Article XXVI - Rates of Pay

Current Language

Current language specifies increases included effective January 2, 2001 and January 1, 2002, each year with a five percent increase and a one per cent lump sum bonus.

Union Language

[Rates of pay for Lucas County Sheriff Office employees covered by this Agreement are set forth in Appendix , which is attached hereto and hereby made a part of this Agreement. The increases shall be a five percent (5%) increase with a one percent (1%) lump sum bonus effective January 1, 2001; and a five percent (5%) increase with a one percent lump sum effective January 1, 2002.]

Section I. The matrix for base rates of pay for employees of the Lucas County Sheriff's Office covered by this Agreement shall be as follows: /1

Classification	0-2 yrs.	2 yrs.	3 yrs.	4 yrs.	5-9 yrs.	10-14 yrs.	15-19 yrs.	20+ yrs.
Clerk/Typist	8.35	9.51	10.09	10.66	10.70	10.72	10.78	10.83
Clerk I	11.33	12.75	13.75	14.17	14.27	14.32	14.35	14.42
Clerk II/911 Call Taker	13.13	14.64	15.39	16.14	16.20	16.24	16.32	16.37
Clerk III/Dispatcher	13.95	15.48	16.24	17.00	17.07	17.14	17.21	17.29
Counselor	14.20	16.28	17.32	18.35	18.48	18.54	18.65	18.72
DS/CO/Process Server	11.40	12.80	14.17	15.55	18.01	18.10	18.18	18.25

/1 The wage rates reflected in the matrix are the 2002 wage rates and do not reflect the wage increases to be paid to the employees pursuant to Sections 2 and three of this article.

Employer Language

The Employer offered no matrix language, and is opposed to the Union proposal for a new matrix.

Discussion - Analysis

The Employer takes issue with the OPBA proposal that it is only proper to phase out the lower wage tier and compress it into one that greatly increases the wages for these employees. Noting that the wage scale in existence was voted on and accepted by the OPBA members, the Employer notes that the pay scale for the more senior employees (those hired prior to 12/31/96) will, as time marches on, be phased out by attrition; currently there are no employees in that pay scale in the first four pay categories, i.e., one month through four years. By the end of the agreement that the parties are currently negotiating, the 5-9 year pay scale will have become useless in that all employees hired before 12/31/96 will have moved into the next category of 10-14 years. Currently, the unit has 439 employees; of that number 198, or 45% of the total unit are employees hired after 1/1/97.

Considering the spread of current employees as discussed above, and apparently severe budgetary constraints, and the general increases which have been offered (and will be dealt with in the next section), it is difficult to justify the proposed compression.

Recommended Language

The Employer position prevails, i.e., the matrix proposed should not be implemented.

12A Article XXIII, Miscellaneous Provisions, Section 6, Mileage Reimbursement

Current Language

The Office agrees to maintain mileage reimbursement at the current level until the amount of reimbursement is raised by the County Commissioners.

New Language

Not later than April 1, 2003, the Employer shall provide vehicles for use by Deputy Sheriffs who are Process Servers, at which time and thereafter, Process Servers shall not receive mileage reimbursement and shall be paid the same rate of pay set forth in Article XXVI for Deputies and Corrections Officers.

Recommended Language

Underlined language agreed to by the parties, recommended.

13. Article XXVI, Rates of Pay

Current Language

Current language specifies increases effective January 2, 2001 and January 1, 2002, each year with a five percent increase and a one per cent lump sum bonus on the effective date.

Union Language

(New Section) Section 2. Employees covered by this Agreement shall receive an hourly wage adjustment effective January 1, 2003; January 1, 2004; and January 1, 2005 in accordance with the following schedule:

	Classification	2003	2004	2005
1.	Clerk/Typist	$.43	$.43	$.43
2.	Clerk I	$.57	$.57	$.57
3.	Clerk II/ 911 Call Taker	$.65	$.65	$.65
4.	Clerk III/ Dispatcher	$.69	$.69	$.69
5.	Counselor	$.75	$.75	$.75
6.	DS/CO/ Process Server	$.72	$.72	$.72

The 2003 wage adjustment shall be added to the rate for each respective classification as set forth in Section 1 of this Article. The 2004 wage adjustment shall be added to the rate which results from the addition of (1) the basic wage adjustment for 2003 (Section 2 above), plus (2) the (2) the percentage increase for 2003 (see Section 3 of this Article). The 2005 wage adjustment shall be added to the rate which results from the addition of (1) the base wage adjustment for 2004 (Section 2 above) , plus (2) the percentage increase for 2004 (see Section 3 of this article).

Employer Language

The employer proposed no language as such, but did propose an across the board increase for all employees of 3% for 2003, 3% for 2004, and 3% for 2005.

Discussion - Analysis

The Union asserts that other Sheriff's Office employees received significantly greater increases than the employees of the Non-Command Unit, thus justifying a significant pay increase of approximately four percent. Apparent budgetary restrictions and such factors as cost-of-living increases, comparable, and the general rather negative economic climate carry considerable weight favoring the Employer position.

Recommended Language

(Employer position is recommended, and the therefore following language, adapting the language of Article XXVI, replacing the former years and percentages with the years and percentages as recommended by the Employer, is offered.)

Rates of pay for Lucas County Sheriff Office employees covered by this Agreement are set forth in Appendix A, which is attached hereto and hereby made a part of this Agreement. The

increases shall be a three percent (3%) increase on January 1, 2003; a three percent (3%) increase on January 1, 2004; and a three percent (3%) increase on January 1, 2005.

14. Article XXVI, Rates of Pay

Current Language

Current language specifies increases included effective January 2, 2001 and January 1, 2002, each year with a five percent increase and a one per cent lump sum bonus on the effective date.

Union Language

(New Section) Section 3. In addition to the matrix adjustment set forth in Section 1 of this Article, and the base wage increases set forth in Section 2 of this Article, employees shall receive a wage increase of four percent (4)% effective January 1, 2003; a wage increase of four percent (4%) effective January 1, 2004; and a wage increase of four percent (4%) effective January 1, 2005.

Employer Language

Please refer to the Employer Language summary in Issue 13, above.

Recommended Language

Please refer to the Recommended Language summary in Issue 13, above.

15. New Article. Employee Parking

Current Language

There is no language on employee parking.

Union - Requested Language

Employees who are not able to park their vehicles at no cost while they are on duty for the Employer shall be reimbursed annually $200 for parking expenses. The parking reimbursement shall be issued each year during the first pay period of December, provided the employee who seeks reimbursement under this provision provides the Employer by the first pay period in November each year with an affidavit of need which indicates the employee has spent at least $100 during the calendar year on parking expenses directly attributed to the employee's work schedule with the Employer.

Employer - Requested Language

The Union labeled this a new proposal; therefore, there was limited or perhaps no time for the Employer to develop a written response. The proposal for reimbursement for employee parking was, however, discussed at the Fact-Finding Hearing. It appeared to be undisputed that parking is hard to find and expensive if found. The Fact-Finder's experience in attempting to locate open commercial parking near the Lucas County facility tends to confirm the Union argument that daytime employees at the Lucas County jail and other downtown buildings find that parking is a difficult and most likely expensive undertaking.

Reimbursement for parking would be a minimal cost for the Employer, i.e., approximately $4,400.00 at most, and is appropriate given the stated circumstances and in the context of this entire set of recommendations.

Recommended Language

The Union language is recommended for this proposed new article.

16. Article XVII, Agreement Termination

Current Language

The current language on Agreement Termination requires a sixty day notice to the other party when the first party wishes to terminate or modify the Agreement.

Union Proposed Language

This Agreement shall be effective as of this 1st day of January [2000] 2003and shall remain inflow force and effect until the 31st day of December [2002] 2005, and which shall automatically be renewed each year thereafter unless either party shall notify the other in writing [sixty 60] ninety [90]days prior to the anniversary date that it desires to terminate or modify this Agreement. In the event that such notice is given, negotiations shall begin no later than thirty (30) sixty (60) days prior to the anniversary date; this Agreement shall remain in full force and be effective during the period of negotiations and until notice of termination of this Agreement is provided to the other party in manner set forth in this provision.

In the event that either party desires to terminate this Agreement, written notice must be given to the other party no less than ten (10) days prior to the desired termination date, which shall not be before the anniversary date set forth in this provision.

Employer Proposed Language

No language was proposed.

Discussion - Analysis

The parties discussed the matter of the time frame for advance notice of desire to negotiate at the Hearing. The Employer argued that moving forward the date for advance notice would make little difference.

The Union urged that moving the date forward would significantly increase the probability that the issues could be resolved in more timely fashion.

The Fact-Finder is persuaded that motivation to initiate negotiations at an earlier date should lead to earlier agreement.

Recommended Language

The Union language is recommended.

17. (from Employer Position Statement)

Article XXI, Section 9

Current Language

Current language stipulates that the health care benefits described in Section 9 shall be provided at no cost to the employees.

Union Proposed Language

None. Health Care was not addressed by the Union.

Employer Proposed Language (conditional)

> Effective March 1, 2004, the Board of Lucas County Commissioners in consultation with the Cost Containment Committee will secure a range of employee group benefits to include but not limited to health (major medical), dental, prescription drug and/or other health related benefits. The Board of County Commissioners will provide $720.00 per month per employee for a family plan and a $300.00 per month per employee for a single plan to cover the cost of purchasing these services. Any range of services over the previously stated total will be shared between the county and the employees on a 50/50 basis with the employee's share collected through a biweekly payroll deduction.

Discussion - Analysis

The Employer stated that should a percentage wage increase of more than three percent be recommended, his position would be as stated above. The wage increase recommended above is three percent for each of the proposed contract's three years.

Recommended Language

No language recommendation is necessary under the circumstances.

Respectfully submitted,

Donald R. Burkholder,
Fact Finder

Date: December 13, 2002